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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7020 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DINESH HUBLAL JAISWAL

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR MA BUKHARI, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/12/1999

ORAL JUDGEMENT

The Commissioner of Police, Ahmedabad City,
Ahmedabad, passed an order on 23rd March, 1999, in
exercise of power under section 3(1) of the Gujarat
Prevention of Anti-Social Activities Act, 1985
(hereinafter referred to as 'the PASA Act') against the

petitioner detaining him under the provisions of the PASA Act.

2. The detaining authority took into consideration five offences registered against the petitioner under the Bombay Prohibition Act. Besides the offences, the authority also took into consideration statements of two anonymous witnesses whose identity is not disclosed by the detaining authority in exercise of powers under section 9(2) of the PASA Act. While exercising this powers, the authority recorded a subjective satisfaction about the correctness and genuineness of the statements made by the witnesses and the fear expressed by them qua the petitioner. The authority, therefore, recorded a subjective satisfaction in exercise of powers under section 9(2) of the PASA Act. After considering alternative less drastic remedy, the authority came to a conclusion that there is no alternative but to detain the petitioner under the provisions of PASA Act since it is necessary to immediately prevent him from pursuing his illegal and anti social activities.

3. The petitioner-detenu has preferred this petition under Article 226 of the Constitution of India. The order of detention is challenged on various grounds.

4. Mr.S.R.Patel, learned advocate appearing for the petitioner has, however, restricted his arguments to only one point namely wrong exercise of powers under section 9(2) of the PASA Act. He submitted that the statements of the anonymous witnesses were recorded on 18.3.99 and 20.3.99. The said statements were verified by the detaining authority on 23.3.99 and the impugned order of detention was also passed on that very day. He submitted that the detaining authority therefore had no time to consider the material before it and arrived at a subjective satisfaction for the need for exercise of powers under section 9(2) of the PASA Act, at the cost of right of the detenu of making an effective representation. He submitted that in light of the decision of this High Court in the case of Kalidas C. Kahar V. State of Gujarat as reported in 1993(2) GLR 1659, the petition may be allowed.

5. Mr.M.A.Bukhari, learned AGP appearing for the respondents has opposed this petition. He submitted that the order passed by the detaining authority after taking into consideration all relevant factors and after scrutinising the papers before it. The quickness in processing the files and passing the order may not be taken as non application of mind. He submitted that the

petition may therefore be dismissed.

6. There is no dispute about the factual part that the statements were verified by the detaining authority on 23.3.99, and the order was passed by the detaining authority on that very day. The affidavit-in-reply, if perused, does not indicate as to when was the proposal made by the sponsoring authority, when was it received, when were the anonymous witnesses called and statements verified and what was the other material before the authority while exercising powers under section 9(2) of the PASA Act, when were the grounds of detention drafted and the order passed.

7. It may be noted that exercise of powers under section 9(2) of the PASA Act has a direct effect on the right of the detenu of making an effective representation. The right of the detenu of making an effective representation is a constitutional right and the detaining authority has, therefore, to strike a balance between the public interest on one hand and the right of the detenu of making a representation on the other. For that purpose the detaining authority has to arrive at a subjective satisfaction for the need for exercise the powers under section 9(2) of the PASA Act. Material is required to be considered by the detaining authority and then the decision taken. The verification of the anonymous witnesses regarding the correctness of the statements and the genuineness of the fear expressed by the witnesses is not an idle formality to be performed, as it affects the public interest on one hand and the right of the detenu on the other. There is nothing on record to show that as to when was the proposal was made, when was it received, what was the material considered by the detaining authority, when was the decision taken, when were grounds of detention prepared and the order passed. In this view of the matter, the exercise of powers under section 9(2) of the PASA Act by the detaining authority suffers from the vice of the non-application of mind as there was no time lag between the verification of the statements of the anonymous witnesses and passing of the order. The entire procedure was carried out on 23.3.99. In view of the decision in the case of Kalidas C.Kahar (supra), the order would stand vitiated. The petition, therefore, deserves to be allowed.

8. The petition is allowed. The impugned order of detention in respect of petitioner-detenu Dinesh Hublal Jaiswal dated 23.3.1999 passed by the Commissioner of Police, Ahmedabad City, Ahmedabad, is hereby quashed and

set aside. The petitioner-detenu be set at liberty forthwith if not required in any other case. Rule is made absolute with no order as to costs.

(A.L. Dave, J.)

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